

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Kaitlin Hudson

v.

Civil No. 11-cv-278-JD

Dr. Michael J. O'Connell's Pain  
Center and Dr. Michael J. O'Connell

O R D E R

Kaitlin Hudson filed suit in state court, alleging claims against her former employer. The defendants removed the case to this court and filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). In response, Hudson objected to the motion to dismiss and filed a motion for leave to file an amended complaint.

A party may amend her pleadings once as a matter of course within twenty-one days after the defendant files a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Fed. R. Civ. P. 15(a)(1)(B). As Rule 15(a)(1)9B appears to apply to Hudson's amended complaint, she need not have moved for leave to file. Therefore, Hudson's motion is granted.

Once an amended complaint is filed, as has happened here, the amended complaint supersedes the original, and "[t]hereafter, the earlier complaint is a dead letter and no longer performs any function in the case." Connectu LLC v. Zuckerberg, 522 F.3d 82,

91 (1st Cir. 2008); accord Brait Builders Corp. v. Massachusetts, --- F.3d ---, 2011 WL 1631952, at \*3 (1st Cir. May 2, 2011).

Because the amended complaint superseded the original, the defendants' motion to dismiss does not address the operative pleading. As a result, the court will not consider the defendants' pending motion to dismiss.

Conclusion

For the foregoing reasons, the plaintiff's motion to amend (document no. 6) is granted. The defendants' motion to dismiss (document no. 4) is denied without prejudice to filing another dispositive motion addressing the amended complaint.

SO ORDERED.

  
Joseph A. DiClerico, Jr.  
United States District Judge

July 19, 2011

cc: William E. Christie, Esquire  
John P. Sherman, Esquire